LIBRARY

Office-Supreme Court, U.S.
FILED
JUL. 8 1965
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 265

GIUSEPPE BRANDANO ET AL.,
PETITIONERS,

v.

STANLEY L. HANDMAN ET AL.,
RESPONDENTS.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

DIANA J. AUGER
80 Federal Street
Boston, Massachusetts 02110
Attorney for Respondents

ARTHUR D. THOMSON
80 Federal Street
Boston, Massachusetts 02110
Of Counsel for Respondents

Blanchard Press, Inc., Boston, Mass. — Law Printers

TABLE OF CONTENTS

	Page
Statement of the Case	1
Discussion	2
Conclusion	4

Table of Citations

Cases

Atlantic Works v. *Brady*, 107 U.S. 192, 199-200 (1882)	3
Cuno Engineering Corp. v. *Automatic Devices Corp.*, 314 U.S. 84 (1941)	3
Great Atlantic & Pacific Tea Co. v. *Supermarket Equipment Corporation*, 340 U.S. 147 (1950)	3
Lincoln Engineering Co. v. *Stewart-Warner Corp.*, 303 U.S. 545, 549 (1937)	3
Toledo Pressed Steel Co. v. *Standard Parts, Inc.*, 307 U.S. 350, 355-6 (1938)	3

In the
Supreme Court of the United States

OCTOBER TERM, 1965

No. 265

GIUSEPPE BRANDANO ET AL.,
PETITIONERS,

v.

STANLEY L. HANDMAN ET AL.,
RESPONDENTS.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Statement of the Case

Respondents agree with the statements in the Petition respecting the judgment of the Court of Appeals, the opinion of the District Court, the jurisdiction of this Court and the Constitutional and statutory provisions applicable to the issue of the validity of the patent in suit, Brandano patent No. 2,981,228.

Respondents do not agree with the implication in the first of the Questions Presented by petitioners (Petition, pages 2-3) that either of the two prior devices on which that patent was invalidated was "unsatisfactory". The validity of that implication depends upon the facts of record.

Respondents deny that the finding of infringement by the District Court has any bearing on the issue of patent validity, or that the affirmance *per curiam* by the Court of Appeals, without opinion, deprived the Petitioners of their right of review by that Court, as suggested in the second of the Questions Presented by petitioners (Petition, page 3).

Respondents also deny the petitioners' statements that the patent in suit was the *first* disclosure of a solution to the problems of how to keep a lobster tank free of excretion and yet provide the lobsters with cool oxygenated brine (Petition, page 5) or that the patentee's disclosure constituted a "pioneer contribution to a sparse art" (Petition, page 6).

Discussion

This Petition relates to a run of the mill patent suit, involving no unusual or exceptional issue of fact or of law, and no question of importance to other courts or to the general public. The Judgment of the District Court, affirmed by the Court of Appeals, is important only to the parties to this civil action; and that judgment depended solely upon the application of settled law to the particular facts of this case.

The Petition mentions no conflict of decisions respecting the Brandano patent, and no decisional law contrary to the authorities relied upon by the District Court; and there are

no conflicting decisions, known to respondents, disputing the principles of law applied by the District Court.

The patent was held invalid on the ground that its claims set forth a combination of old elements, and that the assembly of such old elements did not involve the degree of invention required for patentability.

Contrary to the petitioners' contention (Petition, page 5), it is submitted that this standard of patentability, as affecting a combination or aggregation of old elements, has been well settled, in a manner supporting the judgment below, by the following decisions of this Court:

Atlantic Works v. *Brady*, 107 U.S. 192, 199-200 (1882),
Lincoln Engineering Co. v. *Stewart-Warner Corp.*, 303 U.S. 545, 549 (1937),
Toledo Pressed Steel Co. v. *Standard Parts, Inc.*, 307 U.S. 350, 355-6 (1938),
Cuno Engineering Corp. v. *Automatic Devices Corp.*, 314 U.S. 84 (1941),
Great Atlantic & Pacific Tea Co. v. *Supermarket Equipment Corporation*, 340 U.S. 147 (1950);

and by numerous lower court decisions following the reasoning of the opinions in those cases.

Conclusion

As the Petition herein presents no special and important reasons for further review of the judgment of the District Court, as affirmed by the Court of Appeals, this Court should exercise its judicial discretion by denying the Petition.

Respectfully submitted,

DIANA J. AUGER
80 Federal Street
Boston, Massachusetts 02110
Attorney for Respondents

July, 1965

ARTHUR D. THOMSON
80 Federal Street
Boston, Massachusetts 02110
Of Counsel for Respondents